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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re RAMON B., et al., Persons Coming
Under the Juvenile Court Law.

B160454
(Los Angeles County
Super. Ct. No. CK 45230)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TRACY B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Guillermina Gutierrez Byrne, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Affirmed.

Steven D. Schatz, under appointment by the Court of Appeal, for Defendant
and Appellant.

Lloyd W. Pellman, County Counsel, and William D. Thetford, Deputy
County Counsel, for Plaintiff and Respondent.

Tracy B., the mother of Ramon B. and Brandon B., appeals from the order placing the boys with their father and terminating the jurisdiction of the juvenile court over Ramon and Brandon. Mother contends the court abused its discretion by terminating jurisdiction by leaving the children in the care of the nonoffending father without sufficient assurance he had solved his problems. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

On April 24, 2001, the Department of Children and Family Services (“the Department”) detained Ramon, Brandon and their half-sister Misty from mother.¹ The Department filed a Welfare and Institutions Code section² 300 petition. Ramon and Brandon were placed with their father, who was not living with mother.

Mother was not present at the arraignment hearing on April 26, but, through her court-appointed attorney, advised the court that father had been in and out of jail from 1993 through 1998 for various drug charges and he smoked marijuana and cigarettes. Mother indicated she was happy the children were with father.

Through his court-appointed attorney, father informed the court he had been convicted for narcotics violations and had served time in state prison. The court found a prima facie case for detention and continued the boys’ placement with father. The court urged father to drug test and continue participating in NA/AA meetings.

On May 10, the Department filed a first amended petition adding allegations relating to mother. No allegations were made regarding father.

In May, the Department reported father had admitted to having been arrested in 1990 for car tampering and being convicted of possession of a controlled substance for sale. Father revealed he had served 16 months in prison, was released from prison on

¹ Misty is not a party to this appeal.

² All statutory references are to the Welfare and Institutions Code.

November 9, 1998, and was discharged from parole on September 18, 2000. The Department reported father lived in a spacious townhouse style apartment that was observed to be neat, clean, and appropriately furnished. Father appeared to be able to provide for the children's needs, and the boys appeared to be bonded to father and comfortable in his care. Attached to the report was a letter from Canon Human Services Center, Inc. indicating father had successfully completed a chemical dependency treatment program in 1999; the program had consisted of one month of residential treatment and one year of outpatient treatment. The letter indicated father was continuing with follow up treatment on a monthly basis. The Department recommended the children continue to reside with father.

On May 10, the court granted father's motion for de facto status regarding Misty. The court then placed Misty with father. Mother, who did not object to the motion or to the change in placement, commented placing Misty with father would be nice.

The report for the June mediation acknowledged father's compliance with court orders and his completion and continued attendance in a substance abuse program. Father's criminal background check revealed a burglary conviction in 1989, for which he received 24 months probation; a conviction for transportation for sale of a controlled substance in 1992, for which he received 36 months probation, and a conviction for possession of a controlled substance in 1998, for which he received a 16 month prison sentence. The Department recommended the children continue to reside with father.

Mother submitted to the first amended petition being sustained, as amended in mediation. The sustained language included inappropriate physical discipline of the children; a filthy and unsanitary home; confrontations between mother and maternal great grandmother; and mother's use of maternal great grandmother as a baby-sitter with knowledge of maternal great grandmother's alcohol abuse. At the hearing, mother advised the court she thought father was still using drugs and requested he be made to drug test; mother provided no basis for her suspicions other than father's past drug use and statements from the children father would sometimes stay away from the home

overnight. The court ordered father to complete six random, consecutive drug tests. The court ordered a psychological evaluation of mother and the children, with father to participate for informational purposes only.

On June 20, the court granted the Department's ex parte request that Misty be removed from father's home and be placed in foster care because she and father were not getting along. The report for the August hearing revealed Misty had disclosed mother had told her to act badly in front of father so he would feel the way mother felt when she cared for the children.

Mother did not attend the disposition hearing or participate in the psychological evaluation. The Department reported father had not submitted to any drug testing and recommended the boys remain with father. The court admonished father for not submitting to the drug tests.

Father took Ramon and Brandon to be interviewed by the psychologist, Ronald R. Fairbanks, Ph.D. Because mother failed to cooperate, Dr. Fairbanks was unable to evaluate her. Dr. Fairbanks learned from Ramon that Ramon was excited when father came to pick him up after he had been detained from mother, his father's house was cleaner than his mother's, and his father's girlfriend was a nice woman who cared for him. Ramon said that although father had hit him in the chest once, father mostly talked to him to get him to behave. According to Dr. Fairbanks, it was apparent Brandon appreciated the care his father and his father's girlfriend gave him. Dr. Fairbanks observed a very positive relationship between the three children and father and the children seemed to be well cared for. Dr. Fairbanks recommended all three children reside with father.³

³ When Dr. Fairbanks interviewed Misty, she disclosed mother had told her to misbehave, she had misbehaved, but she felt very badly about it. When Misty shared that information with father, he handled it very well and encouraged her to make progress so they could work towards reuniting.

On August 30, the Department reported father had continued to diligently meet the needs of the children and had cooperated with it, but still had not submitted to drug testing. Mother had tested positive for cocaine. At the hearing, mother again reported father was a current drug user and asked the court to remove the children from his care and place them in a foster home. Mother claimed she did not use drugs even though the court had a positive drug test for her in its possession. The court declared Ramon and Brandon to be dependents and ordered them to remain with father and for the Department to provide family maintenance services.⁴ Father was again ordered to complete the six drug tests and to complete a drug program if he missed a test or tested positive. A review hearing pursuant to section 364 was set for December 20.

On December 20, The Department reported father had successfully completed six drug tests, he had provided Ramon and Brandon with a safe and stable living environment, and the boys were doing well in school. The Department recommended continued family maintenance services for father and that Misty be placed with father. Mother did not attend the hearing, but her attorney requested father be ordered to take a parenting class; the court saw no need for the class. The court continued family maintenance services and scheduled another review hearing, pursuant to section 364, for June 20, 2002.

On June 20, the Department reported Ramon and Brandon continued to do very well in the care of father, and although the boys and father had been required to move in with a paternal aunt, the boys had their own rooms and beds and were doing well in school. Father had been praised by the school because of his involvement, and he had gotten the children into after school activities. The Department recommended jurisdiction be terminated with respect to Ramon and Brandon and reunification services

⁴ The court ordered mother was to only receive reunification services with respect to Misty. The court ordered mother to complete a drug and alcohol program with testing, a parenting class, and a 52-week anger management program.

for mother and Misty be terminated.⁵ Mother requested a contested hearing on both issues. The court set the contested section 364 hearing for July 30.

Mother did not attend her contested hearing and submitted no evidence. Mother's attorney informed the court:

“Your Honor, my client is not present so I cannot offer her testimony to [the] court. I know her position because she stated it to me at the last hearing. [¶] On her behalf, I would just make an argument. She didn't want the case to close because she had been the custodial parent for these children for all of their lives until they were detained from her on or about April of last year. [¶] Since she has been the custodial parent, she wanted to have an opportunity to get the custody of the children back. She didn't want the children to be placed with their -- she is okay with the children remaining with their father, but she didn't want the case to be closed because she wanted to have an opportunity to get the children back.”

At the hearing, the court indicated it had been aware of the case history having been the bench officer from its inception. After receiving evidence from the Department, noting mother's out-of-control behavior and lack of cooperation, the court found Ramon and Brandon would not suffer any substantial risk of detriment if it terminated jurisdiction. The court terminated jurisdiction for Ramon and Brandon and terminated reunification services for mother and Misty.

Mother filed a timely notice of appeal from the order terminating jurisdiction.

⁵ Evidence adduced at the December 20 and June 20 review hearings for Misty showed mother had failed to comply with the case plan.

DISCUSSION

Mother contends the court abused its discretion when it terminated jurisdiction by leaving the children in the care of the nonoffending father without sufficient assurance he had solved his problems as it ignored many potential risks that had been brought to its attention. Mother, who requested a contested hearing on the issue of termination of jurisdiction, did not attend the hearing, submitted no evidence, and did not object to termination on the basis the court needed assurance father had solved his problems. Rather, mother's attorney stated mother was "okay with the children remaining with their father, but she didn't want the case to be closed because she wanted to have an opportunity to get the children back." Mother does not contend the court abused its discretion because she was denied an opportunity to get the children back.

If mother felt the court should have obtained more assurances father had solved his problems, she had the assistance of counsel to present that request to the court. "“The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.”” (In re Christina L. (1992) 3 Cal.App.4th 404, 416.) Thus, we conclude mother waived the right to raise the lack of assurances as an issue on appeal.

Mother also argues the court did not make a written or oral statement regarding the basis of its decision to terminate jurisdiction as required by section 361.2, subdivision (c). Pursuant to section 361.2, subdivision (b), when the court removes a child pursuant to section 361 and places the child with the nonoffending parent, it can: (1) "Order that the parent become the legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child." or (2) "Order that the parent assume custody subject to the supervision of the juvenile court." Appellant did not object to nor appeal from the

disposition order when the court chose the second alternative. Appellant has waived any right to attack the validity of that order. (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 259.)

The court did not terminate its jurisdiction pursuant to section 361.2. The hearing at which the court terminated its jurisdiction was held under section 364⁶ without objection. Section 364, subdivision (c) provides in relevant part: “[T]he court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of the evidence that conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” The court did not assume jurisdiction because of any conditions relating to father. The Department did not argue, much less prove, any conditions existed which required continued court supervision. (See *In re N. S.* (2002) 97 Cal.App.4th 167, 172-173.)

Moreover, Ramon and Brandon were not taken from father’s custody because he had problems; instead, they were taken from mother’s custody and placed with him because mother had problems. Though father had a history of drug abuse and a prison record, nothing indicated he had any current problems. The Department reports all indicated father was doing a good job with the boys and they were doing well in his care. Mother cites no evidence showing any actual harm to the boys while they were with father nor any evidence of neglect or risk of harm or neglect.

⁶ This section generally applies when a child is not removed from a parent’s custody at the disposition hearing.

DISPOSITION

The order is affirmed.

WOODS, J.

We concur:

PERLUSS, P.J.

MUÑOZ (AURELIO), J.^{*}

^{*} Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.